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DATO' SRI BALA KRISHNAN VELLASAMY & ORS v. CITYTEAM MEDIA SDN BHD & ANOR

HIGH COURT MALAYA, KUALA LUMPUR
NANTHA BALAN JC
[CIVIL SUIT NO: 23NCVC-22-05-2014]
B 28 JANUARY 2015

LEGAL PROFESSION: *Practice of law – Practice and etiquette – Application to disqualify solicitor from appearing as counsel for defendants – Solicitor a substantial shareholder and director of defendants' company – Whether there was personal*
C *relationship falling squarely within ambit of disqualification – Conflict of interest – Whether solicitor would be able to act independently as officer of court – Whether solicitor's appearance as counsel compatible with due and proper administration of justice – Whether solicitor had direct pecuniary interests – Legal Profession (Practice and Etiquette) Rules 1978, ss. 3, 5 & 27 – Whether breached – Whether solicitor*
D *and firm should be disqualified*

LEGAL PROFESSION: *Conflict of interest – Professional conduct – Solicitor a substantial shareholder and director of defendants' company – Whether solicitor should be disqualified from appearing as counsel for defendants – Whether there was personal relationship falling squarely within ambit of disqualification – Whether*
E *solicitor would be able to act independently as officer of court – Whether solicitor's appearance as counsel compatible with due and proper administration of justice – Whether solicitor had direct pecuniary interests – Legal Profession (Practice and Etiquette) Rules 1978, ss. 3, 5 & 27 – Whether breached – Whether solicitor and firm should be disqualified*

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This was the plaintiffs' application to disqualify one Saraswathy and her firm Messrs S Kandasami & Co, from appearing as counsel and solicitors for the defendants. The issue that arose in the context of the said application was whether a solicitor who was and still is a shareholder and director of a company which published alleged defamatory articles, would be in breach
G of rr. 3, 5 and 27 of the Legal Profession (Practice and Etiquette) Rules 1978 ('LPPER') if she subsequently represented the company in defamation proceedings. The basis for the plaintiffs' objection was that Saraswathy was a substantial shareholder and director of the first defendant, the publisher of a Tamil Newspaper known as "Tamil Malar" and a key witness in this action
H and as such, she was connected to and thus had or was perceived to have a personal relationship with both the first and second defendants, who was the managing director and executive editor of the first defendant. The plaintiffs submitted that Saraswathy would have a significant pecuniary interest in this action; would lack impartiality; would not be able to maintain her
I professional independence and would likely be impugned in advancing the case for the first and second defendants. The plaintiff further submitted that Saraswathy's continued appearance as counsel for the first and second defendants was incompatible with the proper administration of justice and

that Saraswathy and her firm were in a position of conflict of interest in representing, acting and appearing on behalf of the defendants in this action. Saraswathy, however, asserted that she was a director on the board of the first defendant as a representative of OMS Foundation and that she was not the beneficial owner of the said shares in the first defendant. As such, Saraswathy submitted that she was merely a 'trustee shareholder'. Further, Saraswathy submitted that she was a passive director and had taken no part in the management of the first defendant.

Held (allowing plaintiffs' application):

(1) The purpose, intent and object of the LPPER was to ensure that the administration of justice was not stultified or sullied by actions or conduct of solicitors who are so closely and intimately connected with a party to the suit or to a witness, such that the solicitor will not be able to maintain professional independence or where his continued handling of the matter would be incompatible with the best interests of the administration of justice. Thus, the words 'personal relationship' appearing in r. 3 of the LPPER must be liberally or sensibly construed and in the present circumstances, Saraswathy, who was still a shareholder and director of the first defendant whose co-director was the second defendant, had a personal relationship with the first defendant and the second defendant and fell squarely within the ambit of disqualification in r. 3 of the LPPER. (paras 41 & 42)

(2) Saraswathy's position as director at the material time of the impugned publications constituted a pre-eminent reason for disqualifying her under rr. 3 and 5 of the LPPER. Since she was at all material times and still was a director of the first defendant, it was more probable than not or at least it may be reasonably perceived that she would not be able to act independently as an officer of the court. This court was of the view that because of her close association with the defendants, Saraswathy's appearance as counsel in this matter would not be compatible with the due and proper administration of justice. Being a director of the first defendant would place her in the invidious position of having to reconcile her duty (as director) to the first defendant and allegiance to the second defendant (her co-director) with her duty to the court *qua* officer of the court. Saraswathy would have difficulty reconciling these competing duties. Hence, r. 5 of the LPPER was patently applicable to the present circumstances so as to disqualify Saraswathy and by extension, the firm as well. (paras 46 & 47)

(3) However, the plaintiffs' argument of Saraswathy having a 'direct pecuniary interests' did not hold water. She was merely a 'trustee shareholder' and derived no pecuniary benefit by being a shareholder. Hence, there was no breach of r. 27 LPPER. (para 49)

A **(4)** The LPPER should be broadly and sensibly construed and this court declined to give it a narrow and pedantic interpretation which would be inimical to the whole purpose and tenet of LPPER. In disqualifying Saraswathy and the firm, the defendants would be deprived of counsel of their choice, but that was the inevitable result if the situation of the B solicitor whom they have appointed was such that it violated the LPPER. It is important and imperative that the ethical standards of the Malaysian Bar are not sacrificed at the altar of expediency. Hence, Saraswathy and the firm were accordingly disqualified from acting in this matter. (para 48)

C **Case(s) referred to:**
Tunku Moksin Tunku Khalid v. Bukit Barisan Sdn Bhd & Ors [2009] 1 LNS 835 HC ***(refd)***
Vijayalakshmi Devi Nadchatiram v. Saraswathy Devi Nadchatiram [2000] 4 CLJ 870 FC ***(refd)***

Legislation referred to:
D Legal Profession (Practice and Etiquette) Rules 1978, rr. 3(b)(ii), 5, 27

Other source(s) referred to:
Code of Conduct for the Bar of England and Wales, 4th edn, 1989, para. 16.9

For the plaintiffs - Rueben Mathiavaranam (P Bargavi with him); M/s Bargavi P & Co
For the defendants - Saraswathy Kandasami (Venushah Nadarajan with her);
E *M/s S Kandasami & Co*

[Editor's Note : Please read this judgment together with Dato Sri Bala Krishnan Vellasamy & Ors v. Cityteam Media Sdn Bhd & Anor [2015] 2 CLJ 791]

Reported by Suhainah Wahiduddin

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JUDGMENT

Nantha Balan JC:

Introduction

G **[1]** This is an application (encl. 20) by the plaintiffs to disqualify the learned counsel who appears for the defendants in this defamation action. By the said application the plaintiffs are also seeking to disqualify the law firm which is on record for the defendants.

[2] The issue that arises in the context of the said application is whether H a solicitor who was and still is a shareholder and director of a company which published alleged defamatory articles, would be in breach of rr. 3, 5 and 27 of the Legal Profession (Practice and Etiquette) Rules 1978 ("LPPER") if he/she subsequently represents the company in defamation proceedings.

I **[3]** This is an issue of general importance to the legal profession as it is not uncommon for solicitors to be shareholders and directors of various companies. The question is whether it is appropriate or ethical for the

solicitor and the law firm to represent the company when the latter is embroiled in litigation, particularly when the solicitor was a shareholder/director at the material time when the impugned articles were published.

[4] The first defendant is the publisher of a Tamil newspaper known as "Tamil Malar". The second defendant is the managing director and executive editor of the first defendant. Ms Saraswathy Kandasami ("Ms Saraswathy") appears as counsel in this matter and her firm Messrs S Kandasami & Co ("the firm") are the solicitors for the defendants.

[5] The plaintiffs' application to disqualify Ms Saraswathy and the firm is based on an alleged breach of rr. 3, 5 and 27 of the LPPER. The relevant provisions of the LPPER are as follows;

Rule 3

Advocate and solicitor not to accept brief if embarrassed.

(a) An advocate and solicitor shall not accept a brief if he is or would be embarrassed.

(b) An embarrassment arises:

(i) Where the advocate and solicitor finds he is in possession of confidential information as a result of having previously advised another person in regard to the same matter;

(ii) Where there is **some personal relationship between him and a party or a witness in the proceedings**.

Rule 5

No advocate and solicitor to accept brief if difficult to maintain professional independence.

(a) No advocate and solicitor shall accept a brief if such acceptance **renders or would render it difficult for him to maintain his professional independence** or **is incompatible with the best interest of the administration of justice**.

Rule 27

Advocate and solicitor not to appear where pecuniarily interested.

(a) An advocate and solicitor shall not appear in any matter in which he is **directly pecuniarily interested**.

(b) This rule does not apply to the case of an advocate and solicitor appearing himself to tax his own costs.

(emphasis added)

[6] It is not in dispute that Ms Saraswathy was at all material times and still is a shareholder of the first defendant and holds 550 shares ("the said shares") in the first defendant. She is a "substantial shareholder" of the first defendant. She became a director of the first defendant with effect from 5 March 2008.

[7] The second defendant is also a shareholder of the first defendant and holds 399 shares in the first defendant. He is also a director, managing director and executive editor of the first defendant.

[8] The plaintiffs' cause of action is in defamation and arises out of publications in the Tamil Malar newspaper and the Tamil Malar online Facebook which were published by the first defendant in December 2013 and February 2014 respectively ("the impugned articles"). It is significant to note that at the material time of publication of the impugned articles, Ms Saraswathy was a shareholder and director of the first defendant and the second defendant was her co-director.

Basis For Disqualification

[9] The basis for the plaintiffs' objection to Ms Saraswathy and her firm appearing as counsel and solicitors respectively are as follows:

(i) Ms Saraswathy is counsel for the first and second defendants and sole proprietor of the legal firm who are solicitors for the first and second defendants. She is a substantial shareholder and director of the first defendant, in which the second defendant is also a shareholder and co-director, and a key witness in this action. As such, she is connected to and thus has or is perceived to have a personal relationship with both the first and second defendants;

(ii) Being a substantial shareholder in the first defendant, Ms Saraswathy has or is perceived to have a significant pecuniary interest in this action;

(iii) Being a shareholder and director of the first defendant, in which the second defendant is also a shareholder and co-director, and a key witness in this action, Ms Saraswathy lacks, or it will appear that she lacks, impartiality;

(iv) It will be difficult for her to maintain her professional independence and act objectively. Further, her conduct is also likely to be impugned in advancing the case for first and second defendants;

(v) Ms Saraswathy's continued appearance as counsel for the first and second defendants, and her legal firm's continued representation as solicitors for the first and second defendants, is incompatible with the proper administration of justice; and

(vi) Ms Saraswathy, and the firm are in a position of conflict of interest in representing, acting for and appearing on behalf of the defendants in this action, and are thus in breach of the provisions of the LPPER.

The Response By Ms Saraswathy And The Firm

[10] Ms Saraswathy affirmed an affidavit (encl. 27) stating that she is holding the said shares on trust for "OMS Foundation", which is an organisation which carries out public service activities for the development and education in primary schools, particularly, Tamil schools. She asserts that she is a director on the board of the first defendant as representative of OMS Foundation. The second defendant has also affirmed an affidavit to confirm that Ms Saraswathy is holding the said shares on trust for "OMS Foundation" (para. 8(a) to (i) of encl. 26).

[11] I note that the lengthy explanation given by the second defendant (encl. 26) as regards Ms Saraswathy's shareholding and other matters has not been credibly traversed by the plaintiffs. Basically, it has been asserted by the second defendant that Ms Saraswathy is not the beneficial owner of the said shares in the first defendant and that the ultimate owner of the shares is OMS Foundation which is run by an individual known as Mr OMS Thiagarajan.

[12] It is alleged that the plaintiffs are aware of the beneficial ownership of the said shares by OMS Foundation and that the plaintiffs' representatives had even approached Mr OMS Thiagarajan to prevail upon the first defendant to cease publishing articles about the first and/or the second plaintiff.

[13] In a recent affidavit which was filed on 15 January 2015 (encl. 43) Ms Saraswathy had referred to the following:

(i) Her letter dated 3 March 2014 to the first defendant's company secretary intimating that she was resigning as director of the first defendant;

(ii) Letter dated 23 May 2014 to one Thiagarajan a/l Pavadai in relation to transfer of shares from Ms Saraswathy and appointment of new directors;

(iii) Form 49 duly certified by the company secretary of the first defendant which shows that Ms Saraswathy had resigned as director with effect from 28 March 2014; and

(iv) Letter dated 14 January 2015 from the company secretary to the Suruhanjaya Syarikat Malaysia and pre-lodgement collection slip dated 14 January 2015 which shows the event date as 28 March 2014.

[14] As such Ms Saraswathy says that she is in transit and is merely a "trustee shareholder" and not the beneficial owner of the shares. Hence, she has no personal interest in the shares other than as trustee holding in trust for OMS Foundation. She says that although she is still on record as a director of the first defendant, she has in effect resigned and in due course her name will be taken off from the records as a director of the first defendant. As for her role as director, she asserted that the first defendant has

A a separate editorial bureau and that the second defendant was the executive editor of the newspaper. Hence, she asserts that she was a passive director and took no part in the management of the first defendant.

[15] Upon a scrutiny of the affidavits, I find that the assertion by Ms Saraswathy with regards to her shareholding has not been credibly challenged by the plaintiffs. I am therefore inclined to the view that there is a ring of truth about the assertion that the said shares held by Ms Saraswathy are actually owned by OMS Foundation.

[16] However, it was submitted by counsel for the plaintiffs that even if she is a trustee shareholder and holding the said shares on trust for OMS Foundation, Ms Saraswathy is nevertheless imputed with fiduciary duties and as such she is still intimately connected with the affairs of the first defendant and has a personal connection with the second defendant, as co-director.

[17] In order to underscore the impact that this case would have on Ms Saraswathy in her capacity as a director of the first defendant, counsel for the plaintiffs submitted that if any restraining order is made against the first defendant, then Ms Saraswathy's name will appear in the penal endorsement to such an order. However, at the moment, no such order has been made. And so, it might be a bit premature to speculate as to whether such an eventuality will present itself. But it is nevertheless a prospect which may crystallise and the problem with regards to the penal endorsement may then surface.

[18] Ms Saraswathy argued that the plaintiffs' objection is predicated on the fact that she was/is a shareholder and director of the first defendant and no other extraneous facts or circumstances were alluded to by the plaintiffs for making the objections to disqualify her and her firm.

[19] She submitted that there is no law or rule that prohibits counsel from acting for a company solely by reason of the fact that he/she is a shareholder and a director in that company.

[20] According to Ms Saraswathy the LPPER only sets out circumstances in which counsel shall refuse to accept any brief. She submitted that there was no conflict of interest if she were to act for the defendants. She emphasised that the plaintiffs have failed to set out what are the conflicting interests and whose interests are in conflict in this subject matter.

[21] She further submitted that "conflict of interest" is a term used to describe situations in which a person, be it professional or fiduciary who, contrary to the obligation and absolute duty to act for the benefit of one party or a designated individual, exploits the relationship for personal benefit, typically pecuniary benefit.

[22] According to counsel, conflict of interest can also arise in a situation where a person has a duty to more than one person or organisation, but cannot do justice to the actual or potentially adverse interests of both parties.

[23] As for the suggestion that she had a personal relationship with a party or witness Ms Saraswathy said that she does not fall within that category. She referred to the definition of "personal relationship" as expounded by the Federal Court in *Vijayalakshmi Devi Nadchatiram v. Saraswathy Devi Nadchatiram* [2000] 4 CLJ 870 where it was said as follows:

> By its ordinary *Concise Oxford Dictionary*'s meaning of relationship is 'the fact or state of being related' and 'personal' is relating to or connected with the person. Or to take the meaning of 'relation' in the *Jowitt's Dictionary of English Law* it means 'a general word meaning *prima facie* next-of-kin of any degree or colloquially, kindred of all degrees.

[24] Thus, she therefore maintained that "personal relationship" connotes some family relationship. As such she submitted that shareholders of a company could not in any manner come within the category of persons having "personal relationship".

[25] In so far as pecuniary interest was concerned, counsel submitted that she was a mere trustee shareholder and a passive director and had absolutely no pecuniary interest whatsoever in the outcome of the case.

[26] As for the suggestion that she lacked impartiality and/or would have difficulty in maintaining professional independence and/or would be unable to act objectively as her conduct is likely to be impugned in advancing the defendants' case or that her representation of the defendants in these circumstances would be incompatible with the proper administration of justice, it was submitted that these are mere surmise and conjecture which are not substantiated by any fact.

[27] On the other hand, counsel for the plaintiffs referred to the *English Law Dictionary* by PH Collin which defined the word 'personal' as (a) referring to one person and (b) private and the word 'relationship' as connection or link with another person or company. As such is was submitted that Ms Saraswathy, has a personal relationship with the first defendant as well as the second defendant.

[28] Counsel for the plaintiffs drew comparisons with the position in England which is set out in *Halsbury's Laws of England*, 4th edn. Reissue, vol 3(1), where it is stated that a conflict of interest situation can arise where a barrister acts for a company in which he has been or is a director. And so in England, the rule of prohibition or disqualification not only covers barristers who are incumbent directors but those who are former directors of a company for which they act as well. In such situations, they are obliged to withdraw from appearing as counsel. The following passage in *Halsbury's* illustrates the point clearly.

> Conflict of interest generally. There are certain occasions when a barrister should decline to accept instructions or may be obliged to withdraw from a case professional independence or would otherwise make his representation of the client incompatible with the best interest of justice. Thus a barrister may not accept a set of instructions or a brief in any matter with which he has previously been concerned in the course of another profession or occupation, or with which any firm or company in which that barrister has been a partner or director or by which he has been employed has been so concerned during the period of such partnership, directorship or employment.

[29] This rule of prohibition of disqualification for barristers in England is to be found in the *Code of Conduct for the Bar of England and Wales* (4th edn, 1989) para. 16.9.

[30] In *Tunku Moksin Tunku Khalid v. Bukit Barisan Sdn Bhd & Ors* [2009] 1 LNS 835; [2009] 9 MLJ 528 a shareholder had given a solicitor ("the solicitor") a proxy to vote at an extraordinary general meeting ("EGM"). The solicitor attended as proxy and also presided over the EGM. Eventually the resolutions passed at the EGM became the subject of litigation. The solicitor's law firm represented some of the respondents. An objection was taken so as to disqualify the solicitor and his law firm from acting in the matter. The petitioner had argued that the third respondent had given the managing director (*sic)* of the respondents' solicitors (the solicitor) a proxy to vote in the EGM, and thus he and his legal firm ought to be barred from representing the first, second and seventh respondents because of that connection.

[31] The court found that this was sufficient to establish a personal relationship between the solicitor and the third respondent (who gave him the proxy) resulting in the solicitor being caught by r. 3 of the LPPER. The court then went on to hold that as such, his law firm, his partners and his legal assistants should all be barred from representing the respondents or any one or more of them.

[32] Counsel for the plaintiffs therefore made the point that 'personal relationship' is not confined to 'family relationship', that is to say a relationship having family ties only.

[33] Counsel for the plaintiffs submitted that although Ms Sarasawathy asserts that she is merely a non-executive director as opposed to an executive director of the first defendant, the relevant question is whether there is a personal relationship, that is to say whether there is a personal or private connection between Ms Saraswathy and the first defendant as well as the second defendant (who is a key witness).

[34] It was submitted that Ms Saraswathy is a director of the first defendant and a substantial shareholder in the first defendant company and is thus connected to the first defendant and would find it difficult to maintain her professional independence.

Conclusion

[35] The first question that needs to be answered is: what is the purpose, object and intent of the LPPER. The answer to that vital question has been neatly encapsulated in the judgment of Federal Court in *Vijayalakshmi Devi Nadchatiram v. Saraswathy Devi Nadchatiram* [2000] 4 CLJ 870 where it was held as follows:

> The objective of the provision lies in the fact that the Bar had set a high standard of practice. The Bar requires that an advocate and solicitor must be able to give an objective and independent judgment before he embarks on the task of advising a client. Thus the advocate and solicitor would not be in a position to do so if he is bound by ties of personal relationship to his client and tied by pecuniary interest. The mischief to be cured and the intention of the Rules are too clear to be ignored. The provisions are too clear to admit of any doubt or dispute. They had been so framed to preserve the integrity of an advocate and solicitor so that he may not be in conflict of interest and by the same token ensures that when he acts for a client he is independent and free *vis-a-vis* both when representing the client and performing his duty as an officer of the court in which he appeared.
>
> In this regard we would apply the decision of *Black v. Taylor* [1993] 3 NZLR 403 where the Court of Appeal in New Zealand held that "the court may prevent a barrister acting as counsel in a matter which he had a conflict of interest, or in which he appeared to have a conflict of interest such that justice would not be seen to be done".

[36] In the present case, the plaintiffs are relying on three limbs of the LPPER as a basis to disqualify Ms Saraswathy and the firm. The first is r. 3 which states that disqualification arises if the solicitor is embarrassed. And so the question here is whether Ms Saraswathy is or will be embarrassed if she were to continue acting in the matter. According to r. 3(b)(ii), embarrassment arises when there is some personal relationship between the solicitor and a party or a witness to the proceedings.

[37] Ms Saraswathy's argument is that she has no personal relationship with the second defendant and that merely being a "trustee shareholder" and a director (representing the ultimate shareholder) does not constitute "personal relationship". However, the *English Law Dictionary* by PH Collin defines personal as meaning "referring to one person" and "private". And "relationship" is defined as "connection or link with another person or company".

[38] In *Tunku Moksin Tunku Khalid v. Bukit Barisan Sdn Bhd & Ors* [2009] 1 LNS 835; [2009] 9 MLJ 528, there was no personal relationship between the third respondent and the solicitor who was given a proxy to vote in the EGM, which became the subject matter of the petition. In that case, the solicitor had not just attended the EGM but also presided over it. In that case

A it was held that the solicitor's attendance at the EGM (as proxy) for the third respondent was sufficient to disqualify the solicitor and his firm from acting for some of the other respondents in the petition.

[39] In that case, the court concluded that since the solicitor was given a proxy, he must therefore have been someone trusted by the third respondent, B which gave rise to a "personal relationship". On the other hand, Ms Saraswathy latched onto a passage in the judgment of the Federal Court in *Vijayalakshmi Devi Nadchatiram v. Saraswathy Devi Nadchatiram* [2000] 4 CLJ 870 at p. 875 (paras. f to g), where the court observed as follows:

C > What does come within the ambit of "personal relationship"? By its ordinary *Concise Oxford Dictionary*'s meaning of relationship is "the fact or state of being related" and "personal" is relating to or connected with the person. Or to take the meaning of "relation" in the *Jowitt's Dictionary of English Law* it means "a general word meaning *prima facie* next-of-kin of any degree or colloquially, kindred of all degrees".

D **[40]** However, it is clear that in the above case there was more than one operating disqualifying factor, that is, "personal relationship" and "pecuniary interest". In so far as personal relationship was concerned, it was not in doubt that the solicitor was seeking to act in a matter where her siblings were involved as parties and/or witnesses and where the solicitor E herself had a pecuniary interest in the subject matter of the dispute in court.

[41] Ultimately, I do not read the Federal Court judgment as having limited or confined "personal interest" only to familial and kindred relationship as such an interpretation would be incongruous to the purpose intent and object of the LPPER which is to ensure that the administration of justice is not F stultified or sullied by actions or conduct of solicitors who are so closely and intimately connected with a party to the suit or to a witness, such that the solicitor will not be able to maintain professional independence or where his continued handling of the matter would be incompatible with the best interest of the administration of justice.

G **[42]** And so, the view I take is that the words "personal relationship" appearing in r. 3 of the LPPER must be liberally and sensibly construed and in the present circumstances, Ms Saraswathy, who is still a shareholder and director of the first defendant whose co-director is the second defendant, has a personal relationship with the first defendant and the second defendant and H falls squarely within the ambit of disqualification in r. 3 of the LPPER.

[43] This is accentuated by the significant fact that Ms Saraswathy was a director of the first defendant at the material time of publication of the impugned articles which are the subject matter of the defamation action. Although it has been asserted that she was not holding any executive position I in the first defendant, I cannot ignore the reality, which is that the first

defendant is a small company with a few shareholders and a few directors which gives rise to a greater degree of proximity between co-directors and thereby creating the personal or close relationship.

[44] Ms Saraswathy submitted that merely being a director cannot be a ground for automatic disqualification. I agree. I do not subscribe to the notion that directorship *per se* would amount to automatic disqualification.

[45] Hence, the automatic disqualification rule as enshrined in the *Code of Conduct for the Bar in England and Wales* may be referred to for guidance but the strictures therein would have to undergo such modifications as may be necessary to suit the particular circumstances. And so, it all depends and the individual fact pattern has to be closely examined to determine if the solicitor is so closely and proximately or intimately connected to the facts giving rise to the claim such that his/her appearance as counsel in the matter would make it difficult for the solicitor to maintain a degree of professionalism and independence which are necessary pre-requisites for the promotion of the course of justice.

[46] In the present case, Ms Saraswathy's position as director at the material time of the impugned publications constitutes a pre-eminent reason for disqualifying her under r. 3 and r. 5 of the LPPER. Since she was at all material times and still is a director of the first defendant, it is more probable than not or at least it may be reasonably perceived that she would not be able to act independently as an officer of the court.

[47] At any rate, I am of the view that because of her close association with the defendants in the manner and circumstances as described above, Ms Saraswathy's appearance as counsel in this matter would not be compatible with the due and proper administration of justice. Being a director of the first defendant would place her in the invidious position of having to reconcile her duty (as director) to the first defendant and allegiance to the second defendant (who is her co-director) with her duty to the court *qua* officer of the court. In my view, Ms Saraswathy will have difficulty reconciling these competing duties. Hence, r. 5 of the LPPER is patently applicable to the present circumstances so as to disqualify Ms Saraswathy and by extension the firm as well.

[48] I am therefore impelled to the view that the LPPER should be broadly and sensibly construed and I respectfully decline the invitation to give it a narrow and pedantic interpretation which would be inimical to the whole purpose and tenet of the LPPER. In reaching the conclusion as abovementioned, I was mindful of the fact that in disqualifying Ms Saraswathy and the firm, the defendants would be deprived of counsel of their choice, but that in my view, is the inevitable result if the situation of the solicitor whom they have appointed is such that it violates the LPPER. It is important and imperative that the ethical standards of the Malaysian Bar are not sacrificed at the altar of expediency.

[49] For completeness, I must say that the plaintiffs' argument of Ms Saraswathy having a "direct pecuniary interest" does not hold water. She is merely a "trustee shareholder" and derives no pecuniary benefit by being a shareholder. Hence, there is no breach of r. 27 of the LPPER.

[50] In the result, and for the reasons as stated above, I am of the view that rr. 3 and 5 of the LPPER have been or will be breached and as such, Ms Saraswathy and the firm are accordingly disqualified from acting in this matter. As for costs, I order that a sum of RM3,000 be paid by the defendants to the plaintiffs as costs of this application.

Order accordingly.